



BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

[Docket No. 120330236-2002-01]

RIN 0648-BB48

Western Pacific Pelagic Fisheries; Revised Swordfish Trip Limits
in the Hawaii Deep-set Longline Fishery

AGENCY: National Marine Fisheries Service (NMFS), National
Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: This proposed rule would revise the limits on the
number of swordfish that fishermen may possess or land during
any given Hawaii-based deep-set longline-fishing trip north of
the Equator. This proposed rule would also revise the definition
of deep-set longline fishing to be consistent with the proposed
swordfish retention limits. All other measures applicable to the
deep-set fishery would remain unchanged. The proposed rule
intends to reduce regulatory discards and optimize the yield of
swordfish.

DATES: NMFS must receive comments on the proposed rule by

[insert date 21 days after date of publication in the FEDERAL
REGISTER].

ADDRESSES: You may send comments on the proposed rule, identified by NOAA-NMFS-2012-0097, to either of the following addresses:

- Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal www.regulations.gov; or
- Mail: Michael D. Tosatto, Regional Administrator, NMFS, Pacific Islands Region (PIR), 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814-4700.

Instructions: You must send any comments to one of the above two addresses to ensure that NMFS receives, documents, and considers the comments. Comments sent to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and NMFS will generally post them to www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.) submitted voluntarily by the commenter may be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter "N/A" in the required name and organization fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

The Western Pacific Fishery Management Council (Council) prepared a regulatory amendment, including an environmental assessment and regulatory impact review, that provides background information on this proposed rule. The regulatory amendment is available from www.regulations.gov or the Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813, tel 808-522-8220, fax 808-522-8226, www.wpcouncil.org.

FOR FURTHER INFORMATION CONTACT: Brett Wiedoff, Sustainable Fisheries, NMFS PIR, 808-944-2272.

SUPPLEMENTARY INFORMATION: The Council and NMFS manage Hawaii-based longline fisheries under the Fishery Ecosystem Plan for Pelagic Fisheries of the Western Pacific Region (FEP). Entry into the longline fisheries is limited, with a maximum of 164 vessels allowed. Longline vessels may conduct either deep-set fishing (targeting tunas) or shallow-set fishing (targeting swordfish). Prior to leaving port for a fishing trip, a vessel must declare its intended trip type, deep-set or shallow-set, so that NMFS may assign an observer. Observers collect information about the fishery and interactions with protected species, such as sea turtles. In the shallow-set fishery, NMFS places an observer on the vessel for each trip to ensure 100 percent coverage. In the deep-set fishery, NMFS places observers on at least 20 percent of deep-set trips. Once a vessel declares that

it will be in the shallow-set or deep-set fishery and leaves port, it may not switch to the other fishery during that trip.

This rule would revise the limits on the number of swordfish that fishermen may possess or land during any given Hawaii-based deep-set longline-fishing trip north of the Equator. Currently, a deep-set vessel may keep up to 10 swordfish on any given trip. The Council and NMFS established that limit to discourage shallow-set fishing during a declared deep-set fishing trip.

In 2011, 129 vessels participated in the deep-set fishery. While targeting bigeye tuna, they occasionally catch swordfish. Vessels in the deep-set fishery made 1,306 trips, catching 2,906 swordfish, and keeping 2,502. For comparison, 20 vessels participated in the shallow-set fishery, which targets swordfish, in 2011. These vessels caught 16,405 swordfish, and kept 14,663, during 82 trips.

In 2011, the average deep-set vessel caught two swordfish per trip. Occasionally, however, a vessel may catch up to 25 swordfish during a trip. From 2004-2010, most trips caught ten or less swordfish, with the average deep-set vessel landing three swordfish per trip. Only three percent of the deep-set fleet caught more than 10 swordfish per trip, and only a few trips caught more than 25 fish. In total, NMFS estimates that

the deep-set fishery landed an average of 3,637 swordfish, and discarded 2,547 swordfish per year.

Fishermen in the deep-set fishery claim that the 10-fish limit occasionally forces them to throw away swordfish caught in excess of the limit, referred to as "regulatory discards." The fishermen assert that, because swordfish stocks are healthy and are not subject to overfishing or approaching an overfished condition, the regulatory discards amount to wasted opportunities to sell the excess swordfish. The lost opportunities result in lost wages to fishermen and a reduction of the fish supply to seafood consumers.

In response to the fishermen's concerns, the Council recommended and NMFS proposes to revise the trip limits for vessels that have notified NMFS under §665.803(a) that the vessel will engage in deep-set fishing north of the Equator, as follows:

- With a NMFS observer on board, there would be no limit on swordfish landed or possessed on a trip regardless of the type of hook used. Observers would monitor and document fishing activities, and would assist fishermen in mitigating interactions with protected species.
- With no NMFS observer on board, there would be a limit of 25 swordfish landed or possessed on a trip, if the vessel

uses only circle hooks. The circle hooks would reduce the number and severity of interactions with sea turtles.

- With no NMFS observer on board and if the vessel uses any hooks other than circle hooks, there would be a limit of 10 swordfish landed or possessed on a trip.

The proposed revisions are intended to reduce regulatory discards for vessels in the deep-set fishery, and optimize the yield of swordfish. This would support the National Standards for fishery management in Magnuson-Stevens Fishery Conservation and Management Act.

The predominant hook types used in the deep-set fishery are tuna hooks (Japanese 3.6 sun and 3.8 sun) and small circle hooks (14/0 to 16/0). Research has generally shown that, because circle hooks result in fewer instances where turtles are deeply hooked, replacing tuna hooks with circle hooks would reduce deep ingestion of hooks by sea turtles that tend to bite baited hooks. This is one reason that the use of large (18/0) circle hooks with mackerel type bait is required in the Hawaii-based shallow-set fishery, and has resulted in significant reductions in the number and severity of sea turtle interactions in the shallow-set fishery.

Circle hooks are not required in the deep-set fishery because turtle interaction rates in the deep-set fishery are significantly lower than in the shallow-set fishery. For

example, in 2011, the rate was 0.001 turtle per 1,000 hooks in the deep-set fishery compared to 0.022 turtle per 1,000 hooks in the shallow-set fishery. Because the deep-set fishery already has low interaction rates and nearly half of the fleet already use circle hooks, NMFS is not proposing to require the use of large circle hooks at this time because it would likely not appreciably reduce interaction rates.

The change in the number of swordfish retained and landed under this proposed rule would depend on how many vessels would use circle hooks and retain more than 10 swordfish. If we assume that recent swordfish catch rates do not change and that all deep-set vessels switch to using only circle hooks, then the maximum number of swordfish retained and landed may be sum of the average number of retained (3,637) and discarded (2,547) fish during the years 2004-2010, or 6,184 swordfish per year. The proposed rule may reduce high-grading (discarding lower-value swordfish in favor of higher-value fish within the 10-fish limit) and regulatory discards (discarding swordfish after reaching the swordfish trip limit) because vessels would be able to retain fish already caught and utilize the available resource. North Pacific swordfish stocks are healthy and not approaching an overfished or overfishing condition. Thus, the potential catch of 6,184 swordfish per year would not likely affect the stock status of North Pacific swordfish.

NMFS does not expect the proposed rule to result in large changes to impacts on target or non-target fish species, protected resources, the physical marine environment, or the conduct of the fishery (i.e., area fished, number of vessels engaging in deep-set fishing, the number of trips taken per year, number of hooks set per vessel during a trip, depth of hooks, or deployment techniques in setting longline gear).

This proposed rule would also revise the definition of deep-set longline fishing. Deep-setting is currently defined as longline fishing with all float lines at least 20 meters long, a minimum of 15 branch lines between any two floats (except basket-style longline gear), no light sticks, and possessing or landing no more than 10 swordfish during a given trip. The proposed revised definition would remove the provision regarding swordfish from the definition to be consistent with the proposed revised swordfish retention limits.

This proposed rule would only apply to longline fishing north of the Equator, because specific rules on the retention of swordfish apply to longline fishing south of the Equator (see 50 CFR 665.813(k)).

This proposed rule is consistent with a final rule issued by NMFS on March 19, 2012 (77 FR 15973). That final rule implemented similar limits on the possession and landing of swordfish for longline fishing off the U.S. West Coast.

NMFS must receive any public comments on this proposed rule by the close of business on [insert date 21 days after date of publication in the FEDERAL REGISTER], and will not consider late comments.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the FEP, other provisions of the Magnuson-Stevens Act, and other applicable laws, subject to further consideration after public comment.

The Chief Council for Regulation of the Department of Commerce certified to the Chief Council for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. A description of the action, why it is being considered, and the legal basis for this action are contained in the preamble to this proposed rule.

This proposed rule would revise the limits on the number of swordfish that may be landed or possessed during any given Hawaii-based deep-set longline fishing trip north of the Equator. Currently, a deep-set vessel may keep up to 10 swordfish on any given trip (shallow-set vessels are not subject to a swordfish limit). Under the proposed rule, if the vessel has a NMFS observer on board, there would be no

limit on the number of swordfish landed or possessed per trip, regardless of the type of hook used. If the vessel does not have an observer on board, there would be a limit of 25 swordfish per trip, if the vessel uses only circle hooks. Finally, there would be a limit of 10 swordfish on a trip, if the vessel does not use circle hooks and does not have a NMFS observer on board. This proposed rule would also revise the definition of deep-set longline fishing to be consistent with the proposed swordfish retention limits. All other measures applicable to the deep-set fishery would remain unchanged. The proposed rule intends to reduce regulatory discards and optimize the yield of swordfish.

NMFS expects this rule to directly affect vessels that hold Hawaii longline limited entry permits. As of March 2012, 132 vessels held Hawaii longline limited entry permits (out of 164 total permits) and each is a potential participant in the deep-set fishery because permit holders may participate in both the shallow-set and deep-set fisheries. According to 2011 logbook information, 129 vessels participated in the deep-set fishery. These vessels made 1,306 trips, catching 2,906 swordfish, and keeping 2,502. Swordfish caught per trip averages about two per trip, but on occasion, fishermen have caught more than 10 swordfish and have had to discard excess swordfish because

of the current swordfish retention limit. Between 2004 and 2010, 9.2 percent of observed deep-set trips were noted to have caught more than 10 swordfish during the trip. Swordfish landings in the deep-set fishery were worth over \$1 million, or 2 percent of the total deep-set fishery revenues in 2010.

NMFS estimates the 2010 gross ex-vessel value of pelagic fish landed by Hawaii-based longline fisheries to be about \$70 million, or approximately \$427,000 per vessel. According to Small Business Administration (SBA) size criteria, a business involved in fish harvesting is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and its combined annual receipts are not in excess of \$4.0 million for all of its affiliated operations worldwide. Based on average revenues and the SBA criteria, NMFS believes that all 164 potential deep-set vessels are small entities.

Under the proposed action, deep-set fishermen would be able to keep more swordfish than what is currently allowed, provided they either use circle hooks or have an observer onboard. Based on average value of the estimated discarded swordfish (\$48,395), and the average number of active longline vessels in 2004-2010 (126), the potential increase

in swordfish landings could yield an additional revenue gain of up to \$384 per vessel per year.

Other action alternatives that were considered included allowing deep-set fishermen to keep up to 25 swordfish when circle hooks were used (without the additional allowance made for vessels carrying observers) and removing the swordfish limit for all deep-set longline trips. The alternative which would remove the swordfish limit for all deep-set trips, would be preferred by small entities, however, it may unintentionally encourage shallow-set targeting which may lead to unobserved and undocumented sea turtle interactions.

For the reasons above, NMFS does not expect the proposed action to have a significant economic impact on a substantial number of small entities. NMFS does not expect either a significant loss in landings or expenses incurred by deep-set fishery participants. In fact, if they carry an observer or if they opt to fish using circle hooks, these vessels may have increased swordfish limits and resulting increased opportunities to generate revenue. Revenues would not change if fishermen continue to use hooks other than circle hooks and the vessel does not have an observer on board.

As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

List of Subjects in 50 CFR Part 665

Administrative practice and procedure, Fisheries, Fishing, Hawaii, Longline, Sea turtles, Swordfish.

Dated: June 6, 2012.

Alan D. Risenhoover, Acting Deputy Assistant Administrator
For Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 665 is proposed to be amended as follows:

PART 665--FISHERIES IN THE WESTERN PACIFIC

1. The authority citation for part 665 continues to read as follows:

Authority: 16 U.S.C. 1801 et seq.

2. In § 665.800, revise the definition of "Deep-set or Deep-setting" to read as follows:

§ 665.800 Definitions.

* * * * *

Deep-set or Deep-setting means the deployment of longline gear in a manner consistent with all the following criteria: All float lines are at least 20 meters in length; a minimum of 15 branch lines are attached between any two floats (except basket-style longline gear which may have as few as 10 branch lines between any two floats); and no light sticks are used. As used in this definition, "float line" means a line used to suspend the main longline beneath a float, and "light stick" means any type of light emitting device, including any fluorescent "glow bead," chemical, or electrically-powered light that is affixed underwater to the longline gear.

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3. In § 665.813, revise paragraph (j) and add paragraphs (j)(1) through (j)(3) to read as follows:

§ 665.813 Western Pacific longline fishing restrictions.

* * * * *

(j) Swordfish limits. When fishing north of the Equator (0° lat.), owners and operators of vessels registered for use under a Hawaii longline limited access permit, on a trip for which the permit holder notified NMFS under §665.803(a) that the vessel

would deep-set, may possess or land no more than the following number of swordfish for such trip:

(1) If an observer is on board, there is no limit.

(2) If there is no observer on board, and if only circle hooks are used, the limit is 25.

(3) If there is no observer on board, and if any type of hook other than a circle hook is used, the limit is 10.

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[FR Doc. 2012-14145 Filed 06/08/2012 at 8:45 am; Publication
Date: 06/11/2012]